

**KWAZULU-NATAL
ELIMINATION AND PREVENTION OF
RE-EMERGENCE OF SLUMS BILL, 2006**

CERTIFIED: 26 October 2006

A blue ink handwritten signature, appearing to read 'Adv BA Mbili', is written over a white rectangular background.

Adv BA Mbili

PROVINCIAL STATE LAW ADVISOR

BILL

To provide for the progressive elimination of slums in the Province of KwaZulu-Natal; to provide for measures for the prevention of the re-emergence of slums; to provide for the upgrading and control of existing slums; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the provision of affordable housing for all citizens in South Africa, and especially those sectors of the community who, prior to the advent of democracy in South Africa, were disadvantaged politically and economically, is a cornerstone in the building of a stable and healthy national community;

AND WHEREAS everyone has a constitutional right to have access to affordable housing;

AND WHEREAS section 7 of the Housing Act, 1997 (Act No. 107 of 1997), encourages provincial governments to, amongst other things, enact legislation which will facilitate the achievement of the objective of providing adequate and affordable housing;

AND WHEREAS the KwaZulu-Natal Housing Act, 1998 (Act No. 12 of 1998), was duly enacted by the KwaZulu-Natal provincial government to afford everyone in the Province access to affordable housing;

AND WHEREAS one of the objectives of both the Housing Act, 1997 (Act No. 107 of 1997), and the KwaZulu-Natal Housing Act, 1998 (Act No. 12 of 1998), is to encourage interaction and support between provincial and local governments in the provision of affordable housing;

AND WHEREAS it is desirable to introduce measures which seek to enable the control and elimination of slums, and the prevention of their re-emergence, in a manner that promotes and protects the housing construction programmes of both provincial and local governments,

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

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CHAPTER 1 DEFINITIONS, APPLICATION AND OBJECTS OF ACT

Definitions

1. In this Act any word or expression to which a meaning has been assigned in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), must, unless clearly inappropriate, bear that meaning, and unless the context indicates otherwise –

"annual report" means a report referred to in section 11;

"building" includes any structure, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, irrespective of the material used in the erection thereof, erected or used for or in connection with the accommodation or convenience of persons;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"department" the department in the Provincial Government of KwaZulu-Natal responsible for housing;

"**financial year**" means the period from 1 April in any year to 31 March of the following year;

"**Gazette**" means the official *Provincial Gazette* of KwaZulu-Natal;

"**informal settlement**" means an area of unplanned and unapproved informal settlement of predominantly indigent or poor persons with poor or non-existent infrastructure or sanitation;

"**integrated development planning**" means planning by a municipality in accordance with a plan envisaged in section 25 of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), and "**integrated development plan**" has a corresponding meaning;

"**land**" means a portion of land that is occupied or is capable of being occupied by persons;

"**municipal manager**" means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998);

"**municipality**" means a municipality contemplated in section 155 of the Constitution, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

"**officer**" means an officer as defined in section 1 of the KwaZulu-Natal Housing Act, 1998 (Act No.12 of 1998);

"**Prevention of Illegal Eviction from and Unlawful Occupation of Land Act**" means the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998);

"person in charge" means a person who has or at the relevant time had, the legal authority to give permission to a person to enter or reside upon any land or building;

"Province" means the Province of KwaZulu-Natal as contemplated in section 103 of the Constitution, 1996;

"Provincial Government" means the Provincial Government of the Province of KwaZulu-Natal;

"Provincial Housing Code" means the Provincial Housing Code referred to in section 34 of the KwaZulu-Natal Housing Act, 1998 (Act No.12 of 1998);

"provincial housing development fund" means the provincial housing development fund contemplated in section 12(2) of the Housing Act, 1997 (Act No. 107 Of 1997);

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal;

"regulations" means regulations made in terms of section 22;

"responsible Member of the Executive Council" means the member of the Executive Council of the KwaZulu-Natal Province responsible for housing;

"slum" means overcrowded or squalid land or buildings occupied by predominantly indigent or poor persons with poor or non-existent infrastructure or sanitation, and **"slum conditions"** has a corresponding meaning;

"slum elimination programme" means a programme contained in the status and annual report of a municipality submitted in terms of section 11;

"status report" means a report referred to in section 11;

"this Act" includes the regulations;

"traditional council" means a traditional council established in terms of section 6 of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005);

"transit area" means any land or building acquired or used by a municipality for temporary accommodation or settlement of persons who are removed from a slum or informal settlement.

Application of Act

2.(1) This Act applies to all matters pertaining to the promotion of and protection against illegal and unlawful occupation of land or buildings in the Province.

(2) Where this Act does not regulate a matter pertaining to promotion and protection against illegal and unlawful occupation of land or buildings, the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, apply.

Objects of Act

3. The objects of this Act are –

- (a) to eliminate slums;
- (b) to prevent the re-emergence of slums;
- (c) to promote co-operation between the department and municipalities in the elimination of slums;
- (d) to promote co-operation between the department and municipalities in the prevention of the re-emergence of slums;
- (e) to monitor the performance of the department and municipalities in the elimination and prevention of the re-emergence of slums; and
- (f) to improve the living conditions of the communities,

in the Province.

Prohibition of unlawful occupation

4.(1) No person may occupy any land or building without the consent of the owner or person in charge of such land or building.

(2) Any person who contravenes subsection (1) may be evicted from such land or building after following the procedure set out in sections 4, 5 or 6 of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

Prohibition on use of substandard accommodation for financial benefit

5. The owner or person in charge of a building or structure may not allow persons to use such building or structure for accommodation purposes and in return for financial benefit if such building or structure has not been approved by the municipality in terms of regulations made under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), or is clearly not fit for human habitation on the basis that such building or structure –

- (a) does not have access to natural light;
- (b) does not have running water supply available or connected;
- (c) does not have ablution facilities available or connected;
- (d) is a health nuisance as defined in the National Health Act, 2003 (Act No. 61 of 2003); or
- (e) is in a serious state of neglect or disrepair.

Responsibility of municipality on use of substandard accommodation

6.(1) A municipality within whose area of jurisdiction a building or structure referred to in section 5 falls must give a written notice to the owner or person in charge thereof to institute, within the period stipulated in such notice, proceedings for the eviction of the occupants thereof.

(2) If the owner or person in charge of the building or structure fails to comply with the notice referred to in subsection 1, the municipality may institute proceedings for the eviction of the

occupants of such building or structure as provided for in section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

CHAPTER 3 ROLE OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

Provision of adequate and affordable housing

7. Subject to the provisions of the Housing Act, 1997 (Act No. 107 of 1997), the responsible Member of the Executive Council must promote and facilitate the provision of adequate housing throughout the Province within the framework of the national policy on housing development.

Powers and functions of responsible Member of Executive Council

- 8.(1) For the purposes of section 7, the responsible Member of the Executive Council must –
- (a) ensure that the slum elimination programme adopted by a municipality is consistent with –
 - (i) the objectives of the provincial policy in respect of housing development;
and
 - (ii) the multi-year plan for the execution of national and provincial housing programmes in the Province, as contemplated in section 2B(3) of the KwaZulu-Natal Housing Act, 1998 (Act No. 12 of 1998);
 - (b) monitor the progress made by municipalities in their programmes for the eradication of slums within their respective areas of jurisdiction;
 - (c) co-ordinate slum elimination and related activities in the Province;
 - (d) take all reasonable and necessary steps to support municipalities in their progressive elimination of slums; and
 - (e) administer the provincial housing programme and may, for this purpose, in accordance with that programme and the prescripts contained in the Provincial Housing Code, approve –
 - (i) any project that is recommended by a municipality to upgrade and improve a slum or informal settlement within its area of jurisdiction;

- (ii) any project adopted by a municipality to relocate persons living in a slum or an informal settlement within its area of jurisdiction; or
- (iii) the financing of the projects referred to in subparagraph (i) and (ii) out of money paid into the KwaZulu Natal Housing Fund established in terms of section 11 of the KwaZulu-Natal Housing Act, 1998 (Act No. 12 of 1998).

(2) The responsible Member of the Executive Council may, generally, do everything which is necessary or expedient to achieve the objects of this Act referred to in section 3 and to perform the duties and carry out his or her functions referred to in subsections (1).

CHAPTER 4 ROLE OF MUNICIPALITIES

Progressive realisation of right to adequate and affordable housing

9.(1) A municipality may, as part of its process of integrated development planning, and within its available resources –

- (a) take reasonable measures to achieve for its inhabitants the progressive realization of the right of access to adequate housing contained in section 26 of the Constitution;
- (b) promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;
- (c) encourage and promote housing and economic development in rural areas within its area of jurisdiction so as to avoid the undue influx of persons to urban areas and the resultant development of slums;
- (d) in the case of a Category B municipality, collaborate with the Category C municipality within whose area of jurisdiction it falls, to enable initiatives for the provision of housing sector plans based on a safe and healthy environment for the community to be coordinated on a district-wide basis; and
- (e) in the case of land falling within the area of a traditional council, consult with the traditional council concerned with a view to agreeing to appropriate measures for the elimination of existing slum conditions within the area of such traditional council.

(2) Subject to subsection (3), the responsible Member of the Executive Council may, in the interest of health or safety, and after consulting with the affected municipalities, require a

neighbouring municipality or the Category C municipality within whose area of jurisdiction a Category B municipality falls to provide any sanitary or other service to the occupants of a slum, an informal settlement or a transit area within the area of jurisdiction of such Category B municipality if, in the opinion of the responsible Member of the Executive Council, the neighbouring or Category C municipality concerned is best able and suited to provide such sanitary or other service to the occupants of a slum, an informal settlement or a transit area.

(3) A municipality that is required by the responsible Member of the Executive Council to provide sanitary or other services in terms of subsection (2) must prioritise its available Municipal Infrastructure Grant funding for the provision of such service.

Eviction by municipality

10. A municipality may, subject to section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, the Constitution, and any other national legislation protecting the housing or occupation rights of persons, institute proceedings for the eviction of an unlawful occupier from land or buildings falling within its area of jurisdiction if such eviction is in the public interest.

Submission of status and annual reports to responsible Member of Executive Council

11.(1) Each municipality must, within six months of the commencement of this Act, prepare and submit to the responsible Member of the Executive Council a status report –

(a) detailing the number and location of existing slums within its area of jurisdiction, together with details of its slum elimination programme and key performance indicators to measure progress in the implementation of such programme;

(b) detailing, in respect of each slum, the ownership, description and the estimated number of persons in occupation thereof;

(c) indicating, in the case of persons who are unlawful occupiers of a slum, whether

–

(i) such persons have been in occupation thereof for more than six months;

(ii) land or building may be made available or may reasonably be made available by the municipality or other organ of state or another owner of

land or building for their relocation, particularly, where they have been in occupation for more than six months; and

(iii) the estimated cost, if any, of acquiring the available land or building for the relocation of unlawful occupiers; and

(d) containing recommendations by the municipality as to which slums, if any, are suitable for upgrading and improvement to address the shortage of housing, as well as the estimated cost of such upgrading and improvement.

(2) Each municipality must, after submitting the status report referred to in subsection (1), prepare, within three months after the end of each financial year, an annual report for that financial year reflecting –

(a) the steps taken towards the realization of its slums elimination programme during that financial year, as well as the improvements made in the living conditions of the persons concerned as a result thereof;

(b) a comparison of the progress referred to in paragraph (a) with targets set in the key performance indicators referred to in subsection (1)(a) and the performance in the previous financial year; and

(c) measures taken by the municipality to improve on the progress made to bring it in line with the targets set in the key performance indicators.

Condition for provision of alternative land or buildings

12. In the event of a municipality deciding to make available alternative land or buildings for the relocation of persons living in a slum, such municipality must take reasonable measures, within its available resources, to ensure that such alternative land or building is in reasonable proximity to one or more economic centres.

Establishment of transit area

13.(1) A municipality may identify or acquire land or buildings within its area of jurisdiction for the purpose of establishing a transit area to be utilized for the temporary accommodation of persons who are evicted from a slum pending the acquisition of land or buildings for their permanent accommodation.

(2) A municipality must, in acquiring the land or buildings referred to in subsection (1), ensure that such land or building is –

- (a) suitable for the accommodation of persons; and
- (b) equipped with the necessary basic infrastructure and sanitation,

prior to the occupation thereof by the persons concerned.

Notice to owner or person in charge to upgrade land or building

14.(1) A municipality must, if it is of the opinion that any land or building within its area of jurisdiction is –

- (a) in an unhygienic condition;
- (b) in a state of disrepair; or
- (c) likely to become a slum,

give written notice to the owner or person in charge thereof, calling upon such owner or person in charge to upgrade and refurbish such land or building to remove the unhygienic conditions prevailing therein.

(2) A person served with a notice in terms of subsection (1) must, within three months, upgrade and refurbish such land or building to remove the unhygienic conditions prevailing therein.

(3) Any person who fails to comply with the provisions of subsection (2) commits an offence.

CHAPTER 5

DUTIES OF OWNERS AND PERSONS IN CHARGE OF LAND OR BUILDINGS

Steps to prevent unlawful occupation

15.(1) An owner or person in charge of vacant land or building must, within twelve months of the commencement of this Act, take reasonable steps, which include but are not limited to –

- (a) the erection of a perimeter fence around such vacant land or building;
- (b) the posting of security personnel; or
- (c) any other reasonable preventative measure,

to prevent the unlawful occupation of such vacant land or building.

(2) In the event that the owner or person in charge of vacant land or building fails to comply with subsection (1), a municipality within whose area of jurisdiction the vacant land or building falls must give written notice to the owner or person in charge thereof to, within 30 days of receipt of such notice –

- (a) comply with the provisions of subsection (1); or
- (b) give reasons for failure to comply.

(3) The failure by the owner or person in charge of vacant land or building to comply with the notice issued in terms of subsection (2) constitutes an offence.

Eviction of unlawful occupiers

16.(1) An owner or person in charge of land or a building, which at the commencement of this Act is already occupied by unlawful occupiers must, within the period determined by the responsible Member of the Executive Council by notice in the *Gazette*, in a manner provided for in section 4 or 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, institute proceedings for the eviction of the unlawful occupiers concerned.

(2) In the event that the owner or person in charge of land or a building fails to comply with the notice issued by the responsible Member of the Executive Council in terms of subsection (1), a municipality within whose area of jurisdiction the land or building falls, must invoke the provisions of section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

CHAPTER 6 GENERAL MATTERS

Report to Provincial Legislature by responsible Member of Executive Council

17.(1) The responsible Member of the Executive Council must, within five months after the end of the financial year, table in the Provincial Legislature a consolidated report based on the annual reports submitted by municipalities in terms of section 11.

(2) The report referred to in subsection (1) must, amongst other things, set out –

- (a) the progress made by municipalities in eliminating slums, as well as the improvements made in the living conditions of the persons residing within the area of jurisdiction of each municipality;
- (b) the challenges, if any, encountered by municipalities in the implementation of their slum elimination programmes, as well as the solutions proposed by the responsible Member of the Executive Council to overcome such challenges; and
- (c) any other information which the responsible Member of the Executive Council may wish to bring to the attention of the Provincial Legislature in relation to the provincial programme for the elimination of slums.

Right of municipalities to expropriate land

18. Subject to the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974), or any other law, a municipality may expropriate any land or right in land, whether temporarily or otherwise, required by it for the purpose of establishing a transit area or, alternatively, for permanent settlement of persons who are removed or evicted from a slum.

Municipal by-laws

19. A municipal council may, subject to the Constitution and national legislation, adopt bylaws not inconsistent with this Act to give effect to its slum elimination programme and the provisions of this Act.

Offences

20. Any person who unlawfully interferes with the reasonable measures adopted by an owner or person in charge of vacant land or building to prevent the unlawful occupation of such vacant land or building commits an offence.

Penalties

21. Any person convicted of an offence in terms of section 20, and other offences provided for in this Act, is liable to a fine not exceeding R20 000 or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

Regulations

22.(1) The responsible Member of the Executive Council may, by notice in the *Gazette*, make regulations or issue guidelines not inconsistent with this Act or any national legislation regarding –

- (a) the upgrading of slums and informal settlements within the Province;
- (b) the contents of the status and annual reports to be submitted by municipalities to the responsible Member of the Executive Council in terms of this Act;
- (c) the prerequisites for the financing of any projects adopted by municipalities to upgrade or relocate slums or informal settlements within the Province;
- (d) the administration of any funds that the Provincial Government may advance to the municipalities for the purpose of financing their slum eradication programmes;
- (e) the acquisition of any suitable land or building identified by a municipality for the relocation of persons living in a slum or informal settlement; and
- (f) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) The responsible Member of the Executive Council may by regulation made in terms of subsection (1) declare a contravention of, or failure to comply with, any specific regulation hereof an offence.

Delegations

23.(1) The responsible Member of the Executive Council may delegate to an officer, employee or functionary in the department any power or duty conferred on the responsible Member of the Executive Council by this Act, except –

- (a) the power to make regulations referred to in section 22; and
- (b) the duty to table the consolidated report in the Provincial Legislature in terms of section 17.

(2) A delegation referred to in subsection (1) –

(a) must be in writing;

(b) does not prohibit the responsible Member of the Executive Council from exercising that power or performing that duty; and

(c) may at any time be withdrawn or amended in writing by the responsible Member of the Executive Council.

Short title

24. This Act is called the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act, 2006.